

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for the cost of emergency repairs to the rental unit under sections 33 and 67 of the Act
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for compensation for monetary loss or other money owed under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

D.S., F.E.U. attended the hearing for the Tenant.

M.S., L.K. and I.L. attended the hearing for the Landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

All parties acknowledged service of the Proceeding Packages and evidence. No concerns regarding the nature or timing of service were expressed during the hearing.

Preliminary Matters

The Landlord's application was regarding unpaid rent and compensation for damages in relation to a kitchen fire.

The Tenant's application was regarding costs incurred in relation to the kitchen fire, as well as compensation for what they submit was illegal rent increases over the duration of the tenancy.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues.

In reviewing both applications I have determined that the matters must be related to damages and expenses incurred as the result of the kitchen fire. The following claims are dismissed, with leave to reapply:

Tenant's claim:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act in relation to rent increases during the tenancy

Landlord's claim:

- a Monetary Order for unpaid rent under section 67 of the Act

Issues to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Is the Tenant entitled to a Monetary Order for expenses incurred as the result of emergency repairs?

Is either party entitled to recover the dispute resolution filing fee?

Background and Evidence

The tenancy started on July 1, 2022, with a monthly rent of \$2365.00. A security deposit of \$1183.00 was paid at the start of the tenancy, the Landlord currently retains this.

The Tenancy ended September 2023. A final inspection did not occur, the Landlord did not provide two opportunities to complete an inspection, nor was a #RTB-22, *Notice of Final Opportunity to Schedule a Condition Inspection*, provided to the Tenant.

On December 24, 2021, a fire in the kitchen occurred, causing localized damages. The Tenants do not dispute that the fire was their fault as they left oil on the stove unattended; however, submit that the stove top was unpredictable and at time the low setting would produce high heat.

The Tenants submit that the Landlords informed them that the damages were their responsibility. The Tenant's do not dispute that they initially agreed to repair the damages, however they were unable to find a match for the damaged cabinets and the were unable to agree to replacing all the cabinets.

The Tenant's submitted evidence that they completed the following repairs before informing the Landlord that they would not be paying for further repairs:

- Hood fan \$851.61
- Paint and tools \$186.04
- Oven replacement parts \$100.00
- Potty training seat \$10.00

The Landlord submits that their insurance would hold the Tenants responsible, and their insurance rates would increase.

The Landlord submits that they attempted to minimize the costs by allowing the Tenant to fix the damages.

It is not disputed that the costs of repairs are significantly higher than expected due to the inability to match the cabinets.

The Landlord submits that it is too late to file for insurance coverage and therefore are claiming the following in relation to damages related to the fire:

- Painting \$420.00
- Carpet cleaning \$156.56
- Countertop repairs \$288.75
- Restoration of cabinets \$17,273.54
- Costs related to housing current tenants during repairs \$1200.00

The damages have not yet been fully repaired.

Analysis

Is the landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case it is not disputed that damages occurred, and that they occurred in part, due to the actions or neglect of the tenant.

The Landlord submits that the repairs have not been completed, however submitted quotes for the work.

The Landlord submits that the Tenant did not inform them that they would not be able to cover the full cost of the repairs until after it was too late to file a claim.

The Landlord failed to prove that they attempted to submit an insurance claim and were denied insurance coverage, or that using insurance would cost more than the amounts submitted. Therefore, I find that the Landlord failed to prove that they took steps to mitigate or minimize the loss or damages being claimed. The Landlord's claim for costs in the amount of \$19,338.85, related to damages sustained in the December 24, 2021, fire is dismissed, without leave to reapply.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

As the Landlord's claim for a monetary order in relation to damages is dismissed, the Landlord's application to retain the security deposit in relation to damages is dismissed, without leave to reapply.

Is the Tenant entitled to a Monetary Order for expenses incurred as the result of emergency repairs?

Section 33 of the RTA defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof;

- Damaged or blocked water or sewer pipes or plumbing fixtures;
- The primary heating system;
- Damaged or defective locks that give access to a rental unit; or
- The electrical systems.

Section 33(5) states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The Tenant is claiming reimbursement for repairs made regarding the small kitchen fire. I find that these repairs cannot be classified as emergency repairs as per section 33.

The Tenant's claim for reimbursement, related to emergency repairs is dismissed, without leave to reapply.

Is either party to the dispute entitled to recover the dispute resolution filing fee?

Neither party was successful in their application; therefore, both parties' applications to recover the dispute filing fee is dismissed, without leave to reapply.

Conclusion

The Landlord's application for a Monetary Order for damages to the rental unit or common areas is dismissed, without leave to reapply.

The Landlord's application to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested is dismissed, without leave to reapply.

The Landlord's application to recover the filing fee for this application from the Tenant is dismissed, without leave to reapply.

The Tenant's application for a Monetary Order in relation to expenses incurred as the result of emergency repairs is dismissed, without leave to reapply.

The Tenant's application to recover the filing fee for this application from the Landlord is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 19, 2024

Residential Tenancy Branch